ARKANSAS COURT OF APPEALS

DIVISION IV
No. CA 08-513

MARY BERGMAN and CHRIS BERGMAN APPELLANTS V. ARKANSAS DEPARTMENT OF HUMAN SERVICES APPELLEE	**Opinion Delivered** SEPTEMBER 24, 2008 APPEAL FROM THE CRAIGHEAD COUNTY CIRCUIT COURT, [NO. JV05-438] HONORABLE LARRY B. BOLING, JUDGE AFFIRMED

JOHN B. ROBBINS, Judge

Appellants Mary and Chris Bergman appeal the termination of their parental rights in JB (born November 16, 2001) and CB (born July 28, 2003). They argue that the evidence was insufficient to support the termination order. We disagree and affirm.

On October 24, 2005, the Arkansas Department of Human Services (DHS) petitioned the Craighead County Circuit Court for emergency custody of the children, then ages two and three. According to a DHS affidavit, Jonesboro police found one of the children wandering the streets unsupervised and without a diaper. The police and a DHS worker located the children's father, appellant Chris Bergman, asleep at home. Both children were dirty, with no shoes, and the house was strewn with dirty clothes, garbage, and animal feces. Mr. Bergman was arrested for child endangerment. Mrs. Bergman was at work at the time. The trial court granted emergency custody to DHS on October 24, 2005.

On December 15, 2005, the court adjudicated the children dependent-neglected and established a goal of reunification. The parents were ordered to, among other things, comply with court orders and the case plan (which required them to keep a clean home); maintain stable and appropriate housing; maintain stable employment or provide documentation of sufficient income to meet the family's needs; participate in visitation; follow recommendations from a psychological evaluation; attend parenting classes; and participate in family counseling. The children were placed in foster care and, at some point, therapeutic foster care.

A review order dated June 15, 2006, found appellants in substantial compliance with the case plan. As a result, the court approved a thirty-day trial placement. However, the placement was disrupted based on DHS's determination that unsanitary conditions existed in the home; that the children's emotional needs were not being met; that the children were not in daycare; and that appellants were not complying with therapeutic care recommendations. The children returned to DHS custody.

On December 14, 2006, a permanency-planning order continued custody with DHS and continued the goal of reunification. The court found that appellants were employed and had submitted to psychological evaluations, completed parenting classes, and visited the children. However, the court noted that Mr. Bergman had been incarcerated for non-payment of fines and that appellants had not enrolled the children in daycare or followed recommendations to continue therapeutic services (apparently during the trial placement).

On March 29, 2007, the court changed the goal of the case to termination of parental rights. Thereafter, DHS filed its termination petition, and a hearing was held on November 2, 2007.

Evidence at the hearing showed that appellants completed parenting classes and counseling, and that Mrs. Bergman maintained stable employment throughout the case, though her hours varied greatly. Yet there was also proof that appellants engaged in criminal activity after the children were removed from their custody. Mr. Bergman was incarcerated for non-payment of fines, and, in mid-2007, appellants were convicted on felony theft charges. The charges stemmed from appellants' obtaining goods at rent-to-own stores, then pawning the goods for money. Mrs. Bergman was also convicted of writing nine hot checks during the same period. Appellants were sentenced to sixty months' probation for their crimes. According to Mrs. Bergman, both she and Mr. Bergman still owed a considerable amount in fines and restitution at the time of the hearing.

There was also evidence that appellants lived in several apartments during the case. One of the apartments was deemed unsuitable by DHS, and appellants were forced to leave another after Mr. Bergman was evicted. By the time of the termination hearing, they had been living with Mr. Bergman's mother and twenty-five-year-old brother for several months.[1] Mrs. Bergman testified that she had encountered difficulty finding a place that would rent to convicted felons. She and other witnesses also testified that Mr. Bergman held several jobs

[1] A home study was approved on Mr. Bergman's mother prior to appellants' moving into the residence.

during the case but never maintained employment for more than a few months. Mr. Bergman said that his driver's license was suspended, which impaired his ability to look for work. He was unemployed at the time of the hearing and admitted that he had failed to maintain a stable job.

DHS witnesses testified that the children needed stability and consistency. They also testified that appellants had made progress in the early parts of the case and could become stable again. However, they could not say if or when such stability might re-emerge. The family service worker stated further that the children were doing well in foster care and that their foster parents had expressed an interest in adopting them.

Following the hearing, the circuit court terminated appellants' parental rights in JB and CB. The court found that termination was in the children's best interest and that the following grounds were proven: 1) the children had been adjudicated dependent-neglected and continued out of the parents' custody for twelve months, and, despite DHS's reasonable efforts to rehabilitate the parents and correct the conditions that caused removal, the conditions had not been remedied by the parents; and 2) other factors or issues arose subsequent to the filing of the original dependency-neglect petition, demonstrating that returning the children to the parents' custody was contrary to the children's health, safety, or welfare, and that, despite the offer of appropriate family services, the parents manifested the incapacity or indifference to remedy the subsequent factors or issues, or rehabilitate their

circumstances. *See* Ark. Code Ann. § 9-27-341(b)(3)(B)(i)(*a*) and (vii)(*a*) (Repl. 2008).[2] Appellants appeal from that order.

Termination of parental rights is an extreme remedy and in derogation of the natural rights of parents. *Smith v. Ark. Dep't of Human Servs.*, 100 Ark. App. 74, ___ S.W.3d ___ (2007). However, parental rights will not be enforced to the detriment or destruction of the health and well-being of the child. *Id*. The goal of our termination statute is to provide permanency in a child's life in circumstances where returning the child to the family home is contrary to the child's health, safety, or welfare and it appears from the evidence that a return to the home cannot be accomplished in a reasonable period of time as viewed from the child's perspective. Ark. Code Ann. § 9-27-341(a)(3) (Repl. 2008). Parental rights may be terminated if clear and convincing evidence shows that it is in the child's best interests. Ark. Code Ann. § 9-27-341(b)(3)(A) (Repl. 2008). Additionally, one or more statutory grounds must be shown by clear and convincing evidence. Ark. Code Ann. § 9-27-341(b)(3)(B) (Repl. 2008); *Smith*, *supra*. Clear and convincing evidence is that degree of proof that will produce in the fact-finder a firm conviction as to the allegation sought to be established. *Smith*, *supra*. When the burden of proving a disputed fact is by clear and convincing evidence, the appellate inquiry is whether the trial court's finding that the disputed fact was proven by

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[2] DHS argues that the circuit court also stated a third ground: that the children were subjected to an aggravated circumstance in that there was little likelihood that family services would result in successful reunification. *See* Ark. Code Ann. § 9-27-341(b)(3)(B)(ix)(*a*)(*3*)(*B*)(*i*) (Repl. 2008). We cannot say with certainty that the court's order designated aggravated circumstances as a ground for termination. We therefore decline to consider it in our review.

clear and convincing evidence is clearly erroneous. *Id*. A finding is clearly erroneous when, although there is evidence to support it, the reviewing court on the entire evidence is left with a definite and firm conviction that a mistake has been made. *Id*.

We do not believe the court clearly erred in finding that termination was in the children's best interests and that DHS proved at least one ground for termination. At the time of the termination hearing, the children had been adjudicated dependent-neglected for almost two years. During that period, appellants failed to complete a thirty-day trial placement that occurred several months into the case. The placement was disrupted due to various matters of non-compliance, including unsanitary conditions in the home, which was one of the reasons for the children's initial removal. We have considered disruption of a trial placement as a factor in termination cases. *See Chase v. Ark. Dep't of Human Servs.*, 86 Ark. App. 237, 184 S.W.3d 453 (2004). Appellants also did not acquire stable housing two years into the case and could offer no prospects of attaining it in the future. Parents' failure to secure safe and appropriate housing of their own is contrary to their children's well-being and best interests. *See Carroll v. Ark. Dep't of Human Servs.*, 85 Ark. App. 255, 148 S.W.3d 780 (2004). Further, Mr. Bergman's unstable employment history is contrary to the children's health and safety. *See Carroll*, *supra*.

We are most concerned with appellants' failure to be law-abiding citizens while attempting to reunite with their children. They apparently responded to their financial difficulties, many of which still exist, by committing theft and hot-check violations in late 2006 and early 2007. Appellants' choice to engage in felonious activity as a solution to their

problems brings their judgment and stability into question. It also created the possibility of lengthy imprisonment, thereby exposing their children to the risk of having both parents in jail. Certainly, it manifests an indifference to rehabilitating their circumstances.

Appellants argue that they did most of the things that were asked of them, even though they had some trouble with housing, employment, and criminal activity. However, completion of all or part of the case plan is not always determinative. What matters is whether appellants' partial compliance with the case plan achieved the intended result of making them capable of caring for their children. *See Wright v. Ark. Dep't of Human Servs.*, 83 Ark. App. 1, 115 S.W.3d 332 (2003).

Based on the foregoing, we do not believe the trial court clearly erred in terminating appellants' parental rights.

Affirmed.

GLADWIN and BIRD, JJ., agree.